

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JAMES P. JOHNSON**  
Claimant

VS.

**WITCO CORPORATION**  
Respondent  
Self-Insured

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Docket No. 195,192

**ORDER**

Respondent appeals from a Preliminary Hearing Order dated March 21, 1995 entered by Administrative Law Judge Alvin E. Witwer.

**ISSUES**

Respondent contends that the Administrative Law Judge exceeded his jurisdiction in entering the Order for preliminary benefits, alleging:

- (1) The evidence does not establish claimant suffered injury arising out of and in the course of his employment; and
- (2) Evidence does not establish claimant gave requisite notice of the injury, required by K.S.A. 44-520.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that Preliminary Hearing Order entered by Administrative Law Judge Alvin E. Witwer dated March 21, 1995 should be affirmed.

Claimant alleges his work for respondent as a grease maker has caused bilateral carpal tunnel syndrome. Respondent argues that the preliminary benefits should be denied because the supporting medical evidence relies on the assumption that the claimant's work involves repetitive activities. Respondent and respondent's witness characterize the work as work which does not involve repetitive hand activity. Claimant has testified that his activities do include opening valves and pulling levers with his hands. Although he indicates he would open valves approximately every hour, he also testified that on some days he did not open valves and on others he would be opening valves all day long. Claimant attributes the onset of the symptoms to work performed for respondent. Claimant's testimony combined with the medical report is considered by the Appeals Board adequate to support the finding and order for medical benefits.

The Appeals Board also finds that there was just cause for not giving notice within the ten (10) days required by K.S.A. 44-520. Claimant's last date worked before surgery was September 2, 1994. Claimant notified his employer of the symptoms on or before September 2 and notified his employer he attributed the symptoms to work activities not later than September 16, 1994 as soon as his physician advised him the condition might be work related. The brief delay in giving notice the condition was work related is, in our opinion, justified under the circumstances by the fact he did not know or have reason to know the condition was work related.

**WHEREFORE**, the Appeals Board finds that the Order of Administrative Law Judge Alvin E. Witwer dated March 21, 1995 should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Kathleen J. Cossairt, Kansas City, KS  
Frederick J. Greenbaum, Kansas City, KS  
Alvin E. Witwer, Administrative Law Judge  
George Gomez, Director